



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

November 13, 2013

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Contact Person:

Identification Number:

Telephone Number:

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Legend:

A =
B =
BSub =
L =
M =
N =
O =
P =
Z =
State 1 =
State 2 =

Dear :

We have considered your letter of May 13, 2013, (as supplemented by your letters of July 16, 2013, and August 8, 2013) in which you request rulings on the federal tax consequences of the transactions described below.

Facts

Purpose, Organization and Governance

You are a nonprofit corporation that is exempt from federal income taxation under I.R.C. § 501(a) as an organization described in § 501(c)(4). You are a health maintenance organization (HMO) that provides the following healthcare and healthcare-related services:

- Behavioral healthcare to individual subscribers who qualify for publicly funded services under Title XIX of the Social Security Act (Medicaid)
- Healthcare to individual subscribers who qualify for publicly funded services under Title XXI of the Social Security Act (CHP)
- Healthcare to low-income individual subscribers under a Medicare Advantage plan under Title XVIII of the Social Security Act (Medicare Advantage)

- Coordinated case management and administrative services in State 1 and State 2
- Administrative services for certain programs in State 1 under Title XIX and Title XXI of the Social Security Act

Except for administrative functions B will assume under a contract, you will continue to engage in the activities listed above.

You are a membership organization. Your members currently consist of L, M, and N and O, jointly. You intend, in the near future, to replace joint members, N and O, with P (or an entity affiliated with P). L is a managed care network. M and P are hospitals. O is the centralized clinical faculty practice plan of the faculty affiliated with medical school Z. Each of L, M, O and P is an organization exempt from tax under § 501(c)(3). N recently elected to terminate its exemption under § 501(c)(3) on its last filed Form 990-N *e-Postcard*. Even though N terminated its exemption under § 501(c)(3), it continues to exist under State 1 corporations law and remains an affiliate of Z.

You are managed by a nine-member board of directors, consisting of three Class A directors, three Class B directors, one Class C director, one Class D director and one Class E director. Each member nominates a Class A director who represents the member that nominated him or her. The Class B directors represent the community at large and may not be drawn from employees, officers or directors of a member. In addition, no Class B director may be an employee, officer or directors of an entity that is concurrently represented on the board by a director of any other class. For example, so long as an employee, officer or director of L is serving as a Class A director, no one else who is employed by or is an officer or director of L can serve as a Class B director. The Class C director must have expertise in the field of behavioral health for the underserved population. The Class D director represents the interests of O. The Class E director represents the interests of a Federally Qualified Health Center.

Election of a Class A director requires the unanimous vote of your members. Class A directors serve for an indefinite term, subject to removal or resignation. Directors other than Class A directors are elected by a majority vote of your directors and serve for two-year terms, with the terms of the Class B directors being staggered.

Your elected officers consist of a chair of the board, one or more vice chairs, a secretary and a treasurer. Your other executive officers, including the president/chief executive officer, chief financial officer, medical director and vice presidents, are employees. The president/chief executive officer and chief financial officer may be hired only with the consent of your board of directors.

Proposed Reorganization

State 1 created an American Health Benefit Exchange, within the meaning of 42 USCS § 18031(b) (the "Exchange"). Your board of directors authorized you to create one or more insurance products that may be offered on the Exchange. To that end, you created two taxable subsidiary corporations, A and B, which are described below. In connection with the formation of

A and B, you will reorganize your operations by transferring your employees and certain contracts to BSub.

A

1. Shareholders. A's Articles of Incorporation provide for the issuance of the following three classes of stock, with the rights described below:
 - a. Founder Stock. A is authorized to issue 1,000,000 shares of Founder Stock. All Founder Stock will be issued only to you. As the holder of Founder Stock, you are entitled to dividends and a share of the net assets remaining available for distribution if A is ever liquidated. Each share of Founder Stock entitles you to one vote in matters requiring a shareholder vote, other than the election of directors. Founder Stock votes as a class to elect the number of directors equal to one less than the aggregate number of directors elected by the Director Stock and the Investor Stock. Currently, you elect two members of A's five-member board of directors.
 - b. Director Stock. A is authorized to issue three shares of Director Stock. The Director Stock is held collectively by your three members, L, M, and O and N (to be replaced by P). Director Stock is not entitled to dividends or a share of the net assets remaining available for distribution if A is ever liquidated. Each share of Director Stock entitles its holders to one vote in matters requiring a shareholder vote, other than the election of directors. Director Stock votes as a class to elect three directors; subject to the condition that if a holder of Director Stock acquires sufficient Investor Stock to control the election of one director by the Investor Stock class, the number of directors elected by the holders of the Director Stock will be reduced by one.
 - c. Investor Stock. A is authorized to issue up to 1,000,000 shares of Investor Stock. However, A has no immediate plans to issue Investor Stock. The holder of Investor Stock would be eligible to receive dividends at the same rate per share as Founder Stock. In addition, a holder of Investor Stock would be entitled to a ratable share of the net assets remaining available for distribution if A were ever liquidated. Each share of Investor Stock would entitle its holder to one vote in matters requiring a shareholder vote, other than the election of directors. Investor Stock would vote as a class to elect the number of directors determined by a resolution of the board of directors, but not to exceed four.
2. Governance.
 - a. Board of Directors. A's board of directors is elected as described above. While your officers, directors and key employees (within the meaning of § 416(i)(a)(A)) may serve on A's board of directors, A's bylaws provide that such individuals may not comprise the majority of A's board.
 - b. Officers. A's officers consist, at a minimum, of a president, secretary and treasurer, and are elected by A's board of directors. A's board of directors may create additional officer positions. Any person, including your officers, directors or key employees, may hold two

or more offices; provided, however, that your officers, directors or key employees may not, in the aggregate, hold a majority of the officer positions. In supplemental correspondence, you stated that the person who serves as your president and chief executive officer currently serves as A's president. The persons serving as A's secretary and treasurer are not among your directors, officers or key employees.

3. Capitalization. Funds you paid for your shares of Founder Stock provided A's start-up funding and its initial insurance reserves. You contemplate that the only payments you will receive from A will be as dividends in respect of your ownership of the shares of A.
4. Activities. A is licensed by the State 1 Division of Insurance to provide insurance products under the Exchange. A will bear the insurance risk with respect to the products. A will not limit its insurance risk through the use of capitation or sub-capitation agreements with providers. A will not limit the sale of its products to low-income, high-risk, medically underserved or elderly individuals. Furthermore, premiums A will charge will not be established on a community-rated basis. Nonetheless, you anticipate that A will attract low-income, high-risk, medically underserved or elderly individuals because of their familiarity with you. You contemplate that you will market A's products in a manner that creates a link between you and A, to attract individuals who already possess a familiarity with the healthcare benefits you provide to family members who qualify for your services. In addition, you anticipate that family members of your subscribers and former subscribers who cease to qualify to acquire healthcare services through your programs may purchase health insurance from A. You expect that this will be due, in part, to their familiarity with you or your trade name. Furthermore, you also anticipate that A will specifically reach out to that population through its marketing program.

You will not transact business directly with A. You anticipate that A will contract with BSub for administrative services.

B

1. Shareholders. B's Articles of Incorporation provide for the issuance of the following two classes of stock, with the rights described below:
 - a. Founder Stock. B is authorized to issue 1,000,000 shares of Founder Stock. Founder Stock will be issued only to you. As the holder of Founder Stock, you are entitled to dividends and a share of the net assets remaining available for distribution if B is ever liquidated. Each share of Founder Stock entitles you to one vote in matters requiring a shareholder vote, other than the election of directors. Founder Stock votes as a class to elect the number of directors equal to one less than the number of directors elected by the Director Stock. Currently, you elect two members of the five-member board of directors.
 - b. Director Stock. B is authorized to issue three shares of Director Stock. One share of Director Stock will be issued to each of your members. Director Stock is not entitled to dividends or a share of the net assets remaining available for distribution if B is ever liquidated. Each share of Director Stock entitles its holder to one vote in matters

requiring a shareholder vote, other than the election of directors. Director Stock votes as a class to elect three directors.

2. Governance.

- a. Board of Directors. B's board of directors is elected as described above. While your officers, directors and key employees may serve on B's board of directors, B's bylaws provide that such individuals may not comprise the majority of B's board.
- b. Officers. B's officers consist, at a minimum, of a president, secretary and treasurer, and are elected by its board of directors. The board of directors may create additional officer positions. Any person, including your officers, directors or key employees, may hold two or more offices; provided, however, that your officers, directors or key employees may not, in the aggregate, hold a majority of the officer positions. In supplemental correspondence, you stated that the person who serves as your president and chief executive officer currently serves as B's president. The persons serving as B's secretary and treasurer are not among your directors, officers or key employees.

3. Capitalization. Your payment to acquire your Founder's Stock provided B's start-up funding. In supplemental correspondence, you explained that you also extended short-term loans to B, which B will use to cover operating costs prior to recouping those costs in its ordinary billing cycle. You anticipate that B will fully repay the loans, with interest, prior to the end of 2013. The interest rate is the same rate that you pay on short-term debentures you issue to your members from time to time. You contemplate that, other than interest and principal paid on short-term loans, the only payments you will receive from B will be as dividends in respect of your ownership of the shares of B.

4. Activities. B will be administered as a holding company that will initially be the sole member of BSub. BSub will be organized as a member-managed limited liability company.

- a. Contractual Relationships. All of your employees will be transferred to BSub. In addition, you will transfer certain administrative functions to BSub. You will retain all contracts pertaining specifically to your social welfare activities (such as Medicaid, CHP and Medicare Advantage). You will enter into a contractual agreement with BSub, under which BSub will provide you with various administrative services. A also will enter into a separate contractual agreement with BSub, under which BSub will provide administrative services to A in connection with its insurance business.

In supplemental correspondence, you state that the amounts that you and A will pay to BSub in exchange for administrative services are intended to reflect the reasonable fair market value of those services according to an arms-length standard. You explain that, although BSub has prepared various projections of its operating costs in order to derive the fair market value of such services, reliable comparable data for such projections is not available. Accordingly, BSub will charge you and A for services based upon (i) a ratable allocation of direct costs generated by the services being rendered, (ii) a ratable allocation of indirect overhead costs incurred, and (iii) a profit margin of one percent.

You further state that the one-year term of the contractual agreements with BSub creates an opportunity annually to adjust the pricing for BSub's services. If the leadership of the contracting parties determines that the proposed pricing structure fails or ceases to reflect the price at which such services would be provided between unrelated parties, the terms of the contracts can be adjusted at that time.

- b. Services Provided. BSub will administer your social welfare contracts and agreements. In addition, BSub will administer A's insurance products. BSub's administrative services will include, but will not be limited to, claims processing, managerial services, general administration, insurance, and information technology.
- c. Logos; Business Cards. BSub will display logos and signage for you and for A, but not for itself. BSub's employees will carry business cards showing your and/or A's logo, but not its own.
- d. Potential Future Affiliations. B's board of directors contemplates and intends that B will remain the sole member of BSub. However, B may also acquire interests in other for-profit ventures, such as telemedicine and third-party administration for self-funded medical plans. You anticipate that such entities will obtain administrative services from BSub under separately negotiated contracts.

Rulings Requested

You have requested the following ruling:

Subsequent to the proposed reorganization, the activities of your taxable subsidiaries, A and B, will not be attributed to you for the purposes of your continued qualification for exempt status or liability for unrelated business income tax under § 511.

Law

I.R.C. § 501(c)(4) describes, in part, organizations that are operated exclusively for the promotion of social welfare.

I.R.C. § 511(a) imposes a tax on the unrelated business taxable income of organizations described in § 501(c).

I.R.C. § 512(a)(1) provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in § 513) regularly carried on by it, less allowable deductions and certain modifications.

I.R.C. § 512(b)(1) generally modifies § 512(a)(1) to exclude dividends and interest from the definition of "unrelated business taxable income."

I.R.C. § 512(b)(13) establishes special rules for certain payments received from a controlled entity in the form of interest, annuities, royalties and rents. Such a payment is included in

unrelated business taxable income under § 512(b)(1) to the extent it reduces the net unrelated income of the controlled entity (or any net unrelated loss of the controlled entity).

Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) provides that an "organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community."

In *Gregory v. Helvering*, 293 U.S. 465, 55 S.Ct. 266 (1935) the taxpayer created a subsidiary corporation for the sole purpose of receiving taxpayer's shares of another corporation and then immediately redistributing those shares to herself in a liquidation of the new corporation. After the transfers were complete, the new corporation dissolved without ever engaging in any business activities. The Court held that this use of a corporation would not qualify as a "reorganization" within the meaning of the statute that would exempt from tax, gain arising from a transfer of assets by one corporation to another incident to a plan of reorganization. The Court found that the new corporation had no business or corporate purpose and was "a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character." *Gregory v. Helvering*, 293 U.S. at 469, 55 S.Ct. at 268. Even though a new and valid corporation was created under state law, it was "nothing more than a contrivance." *Id.* The separate existence of the new corporation was disregarded for tax purposes. The amounts realized by shareholder in the transaction were recast as a dividend from the parent corporation.

In *Higgins v. Smith*, 308 U.S. 473, 60 S.Ct. 355 (1940), the taxpayer created a wholly owned corporation to engage in securities transactions with him. The transactions were structured solely to provide a tax benefit to the sole shareholder. His ultimate beneficial interests in, and control over, the securities or the proceeds of their sale, were unchanged by the transactions. The Court held that the transactions between the sole shareholder and his corporation lacked a business purpose, other than to reduce tax liability. Accordingly, the corporation and its sole shareholder were treated as the same person for tax purposes. *Higgins v. Smith*, 308 U.S. at 476, 60 S.Ct. at 357.

In *Moline Properties v. Commissioner*, 319 U.S. 436, 63 S.Ct. 1132 (1943), the Court held that, as a general rule for federal income tax purposes, a parent and its subsidiary corporations are separate taxable entities so long as the purposes for which the subsidiary is formed are the equivalent of business activities. When a corporation is organized with the genuine intention that it will have real and substantial business activities, its existence will not be disregarded for tax purposes. However, the separate identity of a corporation can be disregarded, for tax purposes, when the circumstances of its creation or its transactions with a sole shareholder show that the corporation was not created for any business purpose, but was merely a device to achieve a particular tax result. *Moline Properties*, 319 U.S. at 439, 63 S.Ct. at 1134, citing *Higgins v. Smith*, 308 U.S. 473, 477-78, 60 S.Ct. 355, 357-58 (1940), and *Gregory v. Helvering*, 293 U.S. 465, 469, 55 S.Ct. 266, 267 (1935). The shareholder in *Moline Properties* had created the corporation upon the advice of a creditor. The shareholder then transferred his shares in the corporation to a voting trustee appointed by the creditor. Shares of the corporation were retained by the trustee until the loan was repaid. After the loan was repaid, the shareholder continued to use the corporation to engage in transactions involving the real property. *Moline Properties*, 319 U.S. at 437, 63 S.Ct. at 1133. Upon the sale of the corporation's final asset, the

shareholder argued that the separate existence of the corporation should be ignored. If the corporation's separate existence were disregarded, the shareholder would obtain a more desirable result than if the gain were taxable to the corporation. *Id.* The Court found that, in satisfying the demands of a creditor, the corporation served a valid business purpose. Therefore, the shareholder could not later disregard the existence of the corporation for his own convenience.

Britt v. U.S., 431 F.2d 227 (5th Cir. 1970) involved three corporations created to hold interests in a family business operated as a de facto partnership. The corporations were formed to encourage the children of one original partner to take an interest in the business and to facilitate each original partner's estate planning. The partnership continued to manage the family's citrus groves. Corporate formalities were respected. Each corporation joined as a party to various banking transactions affecting the partnership's business activities. *Id.* at 230. In his concurrence, Judge Tuttle noted that all actual business activities were undertaken at the partnership level by the original individual partners, and that the corporations took no active role in the day to day management of the business. *Id.* at 238. Nonetheless, a subsidiary or related corporation can be created to "to serve the creator's personal or undisclosed convenience, [and] so long as that purpose is the equivalent of business activity or is followed by the carrying on of business by the corporation, the corporation remains a separate taxable entity." *Id.* at 234, citing *Moline Properties v. Commissioner*, 319 U.S. at 438-39, 63 S.Ct. at 1133-34. The court in *Britt* found that only a minimal level of business activity is required for the corporation to be recognized as a separate taxable entity. *Britt v. U.S.*, 431 F.2d at 237. Because the activities of the corporations in question met that low threshold, the separate existence of each corporation was respected.

Krivo Industrial Supply Company v. National Distillers and Chemical Corporation, 483 F.2d 1098 (5th Cir. 1973) examined the "instrumentality doctrine," which allows the courts to disregard the separate legal existence of a corporation when it is a mere instrumentality of a dominant entity. In *Krivo Industrial Supply Company*, the Court of Appeals was called upon to determine whether a creditor corporation should be held liable for debts of its borrower, where the financial circumstances of the borrower put the creditor in a position to exert substantial influence over the operations of the borrower. *Id.* at 1101. The corporate form is not lightly disregarded; however, a subservient corporation's separate existence may be disregarded if the subservient corporation exists to further the purposes of the parent/dominant corporation and the subservient corporation has no separate, independent existence of its own. *Id.* at 1102. Direct and actual operative control of the subservient corporation is required to apply the instrumentality doctrine. The court will look past stock ownership to the specific facts to determine whether the dominant entity, in fact, possessed full control over the subservient corporation and whether, through its manipulation of the subservient corporation, a third party was harmed. *Id.* at 1104. The court held that the "absence of an independent corporate purpose is most apparent in those cases in which the dominant corporation, to further its own corporate purposes, either organized or acquired the subservient corporation." *Id.* at 1105. In *Krivo Industrial Supply Company*, the court found that the creditor lacked the level of control over the borrower for the instrumentality doctrine to apply. *Id.* at 1114.

Geisinger Health Plan v. Commissioner, 30 F.3d 494 (3rd Cir. 1994) analyzed the basis on which the separate corporate existence of an entity created by a tax-exempt organization could be disregarded to entitle the subordinate organization to vicarious exemption through its exempt parent. In denying vicarious exemption to the subordinate organization, the court cited *Moline Properties v. Commissioner*, 319 U.S. at 438-39, 63 S.Ct. at 1133-34, for the principle that a separately incorporated entity must generally qualify for exemption on its own merits. The court noted that the subordinate organization was organized as a separate corporation for reasons its organizers found "administratively and politically advantageous." *Geisinger Health Plan v. Commissioner*, 30 F.3d at 499. Although the subordinate organization was closely related to, and was controlled by the exempt parent, the subordinate organization engaged in a line of business that was distinct from that of the parent. Furthermore, the court found that determining each entity's tax status based upon its own organizational structure is "less complex and more certain for courts and administrators." *Id.*

Analysis

The analysis of the requested ruling involves three issues.

1. *Whether the activities of your taxable subsidiary A will be attributed to you for the purposes of your continued qualification for exempt status.*

A is a separately incorporated entity and its separate existence should be respected for tax purposes.¹

You formed A to engage actively in a line of business distinct from your own. You provide healthcare services to a specific population comprised of individuals and families who qualify for Medicaid, CHP or Medicare under your contracts with State 1. A will issue health insurance policies through the Exchange. This factor distinguishes A from the entities described in *Gregory v. Helvering*, 293 U.S. 465, 55 S.Ct. 266 (1935), and *Higgins v. Smith*, 308 U.S. 473, 60 S.Ct. 355 (1940). The corporations in those cases were created solely to achieve an advantageous tax result for the sole shareholder while lacking any business purpose. In addition, since A will actively engage in a business with the public, its business activities exceed the level required to satisfy the minimal standard established by the court in *Britt v. U.S.*, 431 F.2d 227 (5th Cir. 1970).

You and A are related, but possess materially different governance structures. You are a nonprofit membership corporation. Your membership is limited to organizations that are exempt under § 501(c)(3) or § 501(c)(4). Your board of directors includes representatives of

¹ See *Gregory v. Helvering*, 293 U.S. 465, 55 S.Ct. 266 (1935), *Higgins v. Smith*, 308 U.S. 473, 60 S.Ct. 355 (1940), *Moline Properties v. Commissioner*, 319 U.S. 436, 63 S.Ct. 1132 (1943), *Britt v. U.S.*, 431 F.2d 227 (5th Cir. 1970), and *Krivo Industrial Supply Company v. National Distillers and Chemical Corporation*, 483 F.2d 1098 (5th Cir. 1973); cf. *Geisinger Health Plan v. Commissioner*, 30 F.3d 494 (3rd Cir. 1994).

the community at large, as well as an expert in behavioral medicine relevant to the population that you serve. A is a for-profit corporation whose Articles of Incorporation create a capital structure that allocates rights among three classes of shareholders. Although it has not yet done so, A's Articles of Incorporation authorize it to issue Investor Shares.

You appoint a minority of A's directors. In addition, A's bylaws prevent a majority of its directors from being drawn from your officers, directors or key employees. Therefore, while you participate in A's management, you cannot exert direct management control over A. The interests of constituencies ensured of participation in your operations (such as the community at large) are at most indirectly represented on A's board. Furthermore, A's bylaws permit, but do not require, that your directors, officers or key employees may serve as A's corporate officers. However, A's bylaws also prohibit a majority of its officers from concurrently serving as your directors, officers or key employees. You represent that your president and chief executive officer currently serves as the president of A, but that the secretary and treasurer of A are not your directors, officers nor are they currently key employees of yours. Accordingly, you do not possess the level of control over A's operations that would justify ignoring A's separate corporate existence under the instrumentality doctrine.²

2. *Whether the activities of your taxable subsidiary B will be attributed to you for the purposes of your continued qualification for exempt status.*

As stated above with respect to A, B is a separately incorporated entity and its separate legal existence should be respected.³

B, acting through BSub, will actively engage in business activities different from your activities. BSub will assume responsibility for the administrative activities that you previously engaged in for your own benefit. You will cease to engage in those activities. BSub will also acquire your employees. Even though the activities of B will continue to serve your interests, BSub will also concurrently provide services to A. Furthermore, B intends to investigate and potentially pursue additional businesses, such as telemedicine and third-party administration of self-insured health plans. Therefore, B's business activities exceed the low threshold to support B's separate corporate existence.⁴

You and B are subject to significantly different governance. As with A, your officers, directors and key employees are precluded from comprising a majority of B's board of

² *Krivo Industrial Supply Company v. National Distillers and Chemical Corporation*, 483 F.2d 1098 (5th Cir. 1973).

³ See *Gregory v. Helvering*, 293 U.S. 465, 55 S.Ct. 266 (1935), *Higgins v. Smith*, 308 U.S. 473, 60 S.Ct. 355 (1940), *Moline Properties v. Commissioner*, 319 U.S. 436, 63 S.Ct. 1132 (1943), *Britt v. U.S.*, 431 F.2d 227 (5th Cir. 1970), and *Krivo Industrial Supply Company v. National Distillers and Chemical Corporation*, 483 F.2d 1098 (5th Cir. 1973); cf. *Geisinger Health Plan v. Commissioner*, 30 F.3d 494 (3rd Cir. 1994).

⁴ *Britt v. U.S.*, 431 F.2d 227 (5th Cir. 1970).

directors. Key constituencies entitled to direct representation on your board of directors are only indirectly represented on B's board of directors, owing to your right to elect a minority of B's directors. Furthermore, you will not be the only customer of BSub. A will also purchase services from BSub, as may other businesses that B may acquire in the future.

Creating B and transferring your employees and administrative functions to BSub is consistent with your desire to establish a clear separation between yourself and A. At the same time, obtaining administrative services from BSub potentially enables you to realize efficiencies. The separate contracts between you and BSub and between A and BSub will allocate BSub's costs and overhead in a manner that reflects the value of goods and services provided to you and A's respectively. The contractual agreements also reflect the separate existence of each contracting party. Accordingly, so long as B operates in accordance with its contractual relationships with you and A, it should not be recast as an instrumentality of you.⁵

3. *Whether you will have unrelated business taxable income tax under § 511 because of the activities of A or B.*

As discussed above, the factors necessary to disregard the separate corporate existence of either A or B are not present. Accordingly, A or B will be treated as separate taxpayers. They will report their items of income and expense on their respective corporate tax returns. Consequently, neither the activities of A and B nor the gross income derived from those activities will be attributed to you for the purposes of § 511.

You have not asked us to address the issue of whether payments you may receive from A or B, such as in the form of dividends or interest, will themselves be treated as unrelated business taxable income. Therefore we are not ruling specifically on the effect of §§ 512(b)(1), or 512(b)(13) on income arising from loans you have made to B, or any loans you may, in the future, make to A or B.

Conclusion

In light of the foregoing, we rule as follows:

Subsequent to the proposed reorganization, the activities of your taxable subsidiaries, A and B, will not be attributed to you for the purposes of your continued qualification for exempt status or liability for unrelated business income tax under § 511.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

⁵ *Krivo Industrial Supply Company v. National Distillers and Chemical Corporation*, 483 F.2d 1098 (5th Cir. 1973).

This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented, without consideration of alternative plans of proposed transactions, without consideration of hypothetical situations, and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the I.R.C. or Treas. Reg. to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437